

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHARLES SILAS,

Plaintiff,

No. C 14-2686 PJH (PR)

vs.

**ORDER REVOKING
PLAINTIFF'S IN FORMA
PAUPERIS STATUS**

KEVIN CHAPPLE,

Defendants.

This civil rights case filed pro se by a state prisoner was dismissed and closed as it was duplicative. Plaintiff has filed an appeal with the Ninth Circuit and the case has been referred back to this court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An issue is "frivolous" if it has "no arguable basis in fact or law." See *O'Loughlin v. Doe*, 920 F.2d 614, 617 (9th Cir. 1990).

1 In this action, plaintiff stated that two doctors at High Desert State Prison, which is
2 located in the Eastern District of California, failed to properly treat his Hepatitis C starting in
3 2003. The court noted that plaintiff had filed several actions concerning the same facts in
4 this district and in the Eastern District of California. See *Silas v. Chappell*, No. C 12-3019
5 PJH; *Silas v. Chappell*, No. C 13-0630 PJH; *Silas v. Chappell*, No. C 13-1913 PJH; *Silas v.*
6 *Chappell*, 13-cv-0010 DAD (EDCA).

7 As the defendants named in this action were the same named defendants in the
8 Eastern District of California case (13-cv-0010 DAD) and as both cases described the
9 same facts that occurred in that district, this case was dismissed. As it is clear that
10 plaintiff's claims have no arguable basis in fact or law, this appeal is frivolous and taken in
11 bad faith and plaintiff's in forma pauperis status is **REVOKED**. The Clerk shall forward this
12 Order to the Ninth Circuit in case No. 14-16535.

13 **IT IS SO ORDERED.**

14 Dated: August 12, 2014.



PHYLLIS J. HAMILTON
United States District Judge

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